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EXAMINER

JAGAN, MIRELLYS

ART UNIT	PAPER NUMBER
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2859

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DATE MAILED: 04/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/505,119

Applicant(s)

REVNELL, JOSEPH D.

Examiner

Mirellys Jagan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-18 and 25-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-18, 25-52 and 54-67 is/are rejected.
- 7) ☒ Claim(s) 53 and 68 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 February 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the digital display, the "angle and distance device" [15e], and the limitations of claims 26-29 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

2. Claims 9 and 10 are objected to because of the following informalities:

In claims 9 and 10, lines 9 and 2, respectively, the phrase "template includes" should be changed to "template is formed by" in order to provide a more clear limitation. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 26-29 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the

invention. The specification fails to disclose the motor controller being programmed to record data and create an electronic version of a template and axially rotating the tape as is claimed in claim 26, the motor controller being programmed to move a marker in accordance with the template as claimed in claim 27, the device drawing a template comprising a picture as in claim 28, and the motor controller being programmed to operate automatically to create the template and draw it on a workpiece as claimed in claim 29 (see the first paragraph on page 4 of the amendment filed 2/13/02).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-4, 7, 9, 11, 12, 14, 17, 25, 40, 43, 45, 47, 48, 50, 54-56, 58, 60, 62, 63, 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,269,015 to Barker.

Barker discloses a layout device for measuring and laying out an area of a room comprising:

a square stationary member with a flat surface adapted to be marked on,  
an angle and distance device, the device including a carrier (upper arm 11) rotatably coupled to the stationary member and adapted to hold a tape measure (housing 28) which incorporates a longitudinally and laterally rigid extensible tape (rule 29) that can be extended from a central point, the tape having an edge that facilitates reliably marking on the stationary

member to form an accurate template as the device is rotated and the tape is extended and retracted to critical features of an area,

a holder (block 31) attached to an end of the tape for holding a writing utensil (scriber pin 33),

wherein the template is formed by drawing distance and direction markings (lines 39) directly onto the stationary member (see figure 3).

Barker does not disclose the stationary member having a circular or semi-circular configuration, or the member being a board.

Referring to claim 7, the particular type of material used to make the stationary member, i.e., a board, absent any criticality, is only considered to be the use of a “preferred” or “optimum” material out of a plurality of well known materials that a person of ordinary skill in the art at the time the invention was made would have been able to provide using routine experimentation based on the intended use of applicant’s apparatus, i.e., suitability for the intended use of applicant’s apparatus. See *In re Leshin*, 125 USPQ 416 (CCPA 1960) where the court stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious.

Referring to claims 11 and 12, the shape of the stationary member, i.e., circular or semi-circular shaped, absent any criticality, is only considered to be an obvious modification of the shape of the stationary member disclosed by Barker as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based

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on its suitability for the intended use of the invention, i.e., to provide a layout on the surface of the member. See *In re Dailey*, 149 USPQ 47 (CCPA 1976).

With respect to claims 17, 25, 40, 43, 45, 47, 48, 50, 54-56, 58, 60, 62, 63, and 65 in utilizing the device disclosed above by Barker above to measure the layout of a room, the method steps of claims 17, 25, 40, 43, 45, 47, 48, 50, 54-56, 58, 60, 62, 63, and 65 would inherently be followed.

7. Claims 16-18, 52, and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of U.S. Patent 6,115,931 to Arcand.

Barker discloses a layout device for measuring a room comprising:

a stationary member with a flat surface adapted to be marked on,

an angle and distance device rotatably coupled to the stationary member including a longitudinally and laterally rigid extensible tape that can be extended from a central point, the tape having an edge that facilitates reliably marking on the stationary member to form an accurate template as the device is rotated and the tape is extended and retracted to critical features of an area, wherein the template is formed by drawing distance and direction markings directly onto the stationary member.

Barker does not disclose the tape having a pivotal pointer at a distal end.

Arcand discloses a tape measure having a pivotal pointer (pin attachment 100) at a distal end of the tape for securely attaching the distal end onto a wall and allowing a single person to take measurements (see figure 3 and column 3, lines 55-60)

Referring to claim 16, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding a pivotal

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pointer at a distal end of the tape, as disclosed by Arcand, in order to allow a single person to take measurements by securely attaching the distal end onto a wall when extending the tape measure.

With respect to claims 17, 18, 52, and 67 in utilizing the device disclosed by Barker and Arcand to measure the layout of a room, the method steps of claims 17, 18, 52, and 67 would inherently be followed.

8. Claims 5, 41, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of U.S. Patent 4,835,870 to Rauch et al [hereinafter Rauch].

Barker discloses a device having all of the limitations of claims 5, 41, and 57, as stated above in paragraph 6, except for the carrier having a front leg with guides for the tape.

Rauch discloses a device for measuring distances having a carrier with a front leg (front end area 11c) having guides (guides 20) for a tape (tape 19), the guides protecting the tape from being damaged as it is retracted back into a tape measure (see figure 1, column 2, lines 10-13, and column 3, lines 33-39).

Referring to claim 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding a front leg with guides to the carrier, as disclosed by Rauch, in order to protect the tape as it is being retracted into the tape measure.

With respect to claims 41 and 57, in utilizing the device disclosed by Barker and Rauch to measure the layout of a room, the method steps of claims 41 and 57 would inherently be followed.

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9. Claims 6, 13, 42, 49, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of U.S. Patent 5,768,797 to Trevino.

Barker discloses a device having all of the limitations of claims 6, 13, 42, 49, and 64, as stated above in paragraph 6, except for the carrier having an integral housing within which is located the tape measure, and the angle and distance device having a tape measure extender for mechanically extending the tape for allowing a single person to create the template while staying in a central location.

Trevino discloses a tape measure (reel 60) integrally mounted within a housing (housing 12) having means for automatically extending and retracting a tape (tape 16). The device allows a single person to extend and retract a tape while staying in a single location (see figure 1A, 2, and 3, column 1, lines 29-46, and column 3, lines 20-46).

Referring to claim 6, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by utilizing the tape measure mounted within the housing as disclosed by Trevino in order to allow a single person to extend and retract the tape while staying in a single central location when making a template of a layout area. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make separable the tape measure and housing disclosed by Baker and Trevino since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. Nerwin v. Erlichman, 168 USPQ 177, 179 (PTO Bd. Of Int. 1969).



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With respect to claim 42, in utilizing the device disclosed by Baker and Trevino, as stated above for claim 6, to measure the layout of a room, the method steps of claim 42 would inherently be followed.

Referring to claim 13, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by utilizing a tape measure having a tape measure extender for mechanically extending and retracting a tape, as disclosed by Trevino, in order to allow a single person to extend and retract the tape while staying in a single central location when making a template of a layout area.

With respect to claims 49, 64, in utilizing the device disclosed by Barker and Trevino, as stated above for claim 13, to measure the layout of a room, the method steps of claims 49, 64 would inherently be followed.

10. Claims 8, 10, 44, 46, 59, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of U.S. Patent 4,344,231 to Martinez.

Barker discloses a device having all of the limitations of claims 8, 10, 44, 46, 59, and 61 as stated above in paragraph 6, except for the stationary member having non-slip feet and the template being formed by drawing onto paper placed on the stationary member.

Martinez discloses a device for mapping areas having a stationary member (board 12) with non-slip feet (legs 18) for securing the member to a surface when extending a measuring tape (tape 38) that is attached to the member, and a template being formed by drawing onto paper placed on the stationary member in order to remove the template from the stationary member after a layout is marked (see figure 2).

Referring to claim 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding non-slip feet to the stationary member, as disclosed by Martinez, in order to prevent the stationary member from moving when the tape is being retracted or extended from the tape measure, thereby obtaining a more accurate layout.

With respect to claims 44 and 59, in utilizing the device disclosed by Baker and Martinez, as stated above for claim 8, to measure the layout of a room, the method steps of claims 44 and 59 would inherently be followed.

Referring to claim 10, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by placing paper on the stationary member and drawing the template onto the paper, as disclosed by Martinez, in order to remove the template from the stationary member after a layout is marked.

With respect to claims 46 and 61, in utilizing the device disclosed by Baker and Martinez, as stated above for claim 10, to measure the layout of a room, the method steps of claims 46 and 61 would inherently be followed.

11. Claims 13, 15, 51, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of French Patent 2614982 to Mercier.

Barker discloses a device having all of the limitations of claims 13, 15, 51, and 66, as stated above in paragraph 6, except for the angle and distance device having a tape measure extender for mechanically extending the tape for allowing a single person to create the template while staying in a single central location, and a digital readout for displaying the distance the tape is extended.

Mercier discloses a tape measure having a tape measure extender (micromotor) for mechanically extending and retracting a tape (tape 2) in order to allow a single person to extend and retract the tape while staying in a single central location, and a digital readout (digital display 10) for automatically displaying the distance the tape is extended (see figure 1 and abstract).

Referring to claim 13, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by utilizing a tape measure having a tape measure extender for mechanically extending and retracting a tape, as disclosed by Mercier, in order to allow a single person to extend and retract the tape while staying in a single central location when making a template of a layout area.

Referring to claim 15, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by utilizing a digital readout displaying the distance the tape is extended, as disclosed by Mercier, in order to allow a single person to obtain more accurate distance measurements when taking measurements for a layout.

With respect to claims 51 and 66, in utilizing the device disclosed by Barker and Mercier, as stated above for claim 15, to measure the layout of a room, the method steps of claims 51 and 66 would inherently be followed.

12. Claims 26, 30, 32, 34, and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Mercier.

Barker discloses a layout device for measuring and laying out an area of a room comprising:

a square stationary member with a flat surface adapted to be marked on,  
an angle and distance device, the device including a carrier rotatably coupled to the stationary member and adapted to hold a tape measure which incorporates a longitudinally and laterally rigid extensible tape that can be extended from a central point, the tape having an edge that facilitates reliably marking on the stationary member to form an accurate template as the device is rotated and the tape is extended and retracted to critical features of an area,  
a holder attached to an end of the tape for holding a writing utensil,  
wherein the template is formed by drawing distance and direction markings directly onto the stationary member.

Barker does not disclose the device having a tape measure extender for mechanically extending the tape for allowing a single person to create the template while staying in a single central location, the stationary member having a circular or semi-circular configuration, the member being a board, and the device having a motor and motor controller connected to the tape for extending and retracting the tape, the controller being programmed to record data and create an electronic version of the template.

Mercier discloses a tape measure having a motor and motor controller for mechanically extending and retracting a tape in order to allow a single person to extend and retract the tape while staying in a single central location, the tape measure also having a memory for recording data, and a processor for processing the data.

Referring to claim 26, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by utilizing a tape measure having a motor and motor controller for mechanically extending and retracting a tape recording and processing data, as disclosed by Mercier, in order to allow a single person to extend and retract the tape and calculate the area measured while staying in a single central location when making a template of a layout area.

Referring to claim 30, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by utilizing a tape measure having a tape measure extender for mechanically extending and retracting a tape, as disclosed by Mercier, in order to allow a single person to extend and retract the tape while staying in a single central location when making a template of a layout area.

Referring to claim 32, the particular type of material used to make the stationary member, i.e., a board, absent any criticality, is only considered to be the use of a "preferred" or "optimum" material out of a plurality of well known materials that a person of ordinary skill in the art at the time the invention was made would have been able to provide using routine experimentation based on the intended use of applicant's apparatus, i.e., suitability for the intended use of applicant's apparatus. See *In re Leshin*, 125 USPQ 416 (CCPA 1960) where the court stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious.

Referring to claims 36 and 37, the shape of the stationary member, i.e., circular or semi-circular shaped, absent any criticality, is only considered to be an obvious modification of the shape of the stationary member disclosed by Barker as the courts have held that a change in

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shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention, i.e., to provide a layout on the surface of the member. See *In re Dailey*, 149 USPQ 47 (CCPA 1976).

13. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker and Mercier as applied to claims 26, 30, 32, 34, and 36-38 above, and further in view of Rauch.

Barker and Mercier discloses a device having all of the limitations of claim 31, as stated above in paragraph 12, except for the carrier having a front leg with guides for the tape.

Rauch discloses a device for measuring distances having a carrier with a front leg having guides for a tape, the guides protecting the tape from being damaged as it is retracted back into a tape measure.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker and Mercier by adding a front leg with guides to the carrier, as disclosed by Rauch, in order to protect the tape as it is being retracted into the tape measure.

14. Claims 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker and Mercier, as applied to claims 26, 30, 32, 34, and 36-38 above, and further in view of Martinez.

Barker and Mercier disclose a device having all of the limitations of claims 33 and 35, as stated above in paragraph 12, except for the stationary member having non-slip feet and the template being formed by drawing onto paper placed on the stationary member.

Martinez discloses a device for mapping areas having a stationary member with non-slip feet for securing the member to a surface when extending a measuring tape that is attached to the member, and a template being formed by drawing onto paper placed on the stationary member in order to remove the template from the stationary member after a layout is marked.

Referring to claim 33, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker and Mercier by adding non-slip feet to the stationary member, as disclosed by Martinez, in order to prevent the stationary member from moving when the tape is being retracted or extended from the tape measure, thereby obtaining a more accurate layout.

Referring to claim 35, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker and Mercier by placing paper on the stationary member and drawing the template onto the paper, as disclosed by Martinez, in order to remove the template from the stationary member after a layout is marked.

15. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker and Mercier, as applied to claims 26, 30, 32, 34, and 36-38 above, and further in view of Arcand.

Barker and Mercier disclose a device having all of the limitations of claim 39, as stated above in paragraph 12, except for the tape having a pivotal pointer at a distal end.

Arcand discloses a tape measure having a pivotal pointer at a distal end of the tape for securely attaching the distal end onto a wall and allowing a single person to take measurements.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker and Mercier by adding a pivotal pointer at a distal end of the tape, as disclosed by Arcand, in order to allow a single person to take measurements by securely attaching the distal end onto a wall when extending the tape measure.

*Allowable Subject Matter*

16. Claims 27-29 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

17. Claims 27-29 are objected to as being dependent upon a rejected base claim.

18. Claims 53 and 68 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

19. The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record does not disclose or suggest the following in combination with the remaining limitations of the claims:

A tape measure having a motor controller for drawing a template or a picture on a workpiece by moving a tape in the tape measure over the workpiece, and a method of measuring and laying out a template having the step of writing angle information on the stationary member.



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*Response to Arguments*

20. Applicant's arguments with respect to claims 1-18 and 25-29 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents disclose layout tools:

U.S. Patent 5,755,072 to Lingafelter U.S. Patent 6,314,334 to Berlin et al

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 703-305-0930. The examiner can normally be reached on M-F 8:30-4:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F Gutierrez can be reached on 703-308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7725 for regular communications and 703-308-7725 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

mj  
March 25, 2002



**Diego Gutierrez**  
**Supervisory Patent Examiner**  
**Technology Center 2800**